The following report is scheduled for discussion by the Board of Governors at its July 28, 2001 meeting in Los Angeles (1149 S. Hill St).

THE STATE BAR OF CALIFORNIA

REPORT AND FINDINGS ON MULTIDISCIPLINARY PRACTICE

Prepared by:

THE STATE BAR OF CALIFORNIA
TASK FORCE
ON MULTIDISCIPLINARY PRACTICE

June 29, 2001

REPORT AND FINDINGS
ON MULTIDISCIPLINARY PRACTICE

Prepared by:

THE STATE BAR OF CALIFORNIA
TASK FORCE
ON MULTIDISCIPLINARY PRACTICE

June 29, 2001

****

SUMMARY OF FINDINGS

The State Bar of California's Multidisciplinary Practice ("MDP") Task Force ("Task Force") has examined whether lawyers could be permitted to join with nonlawyer professionals as co-principals in a professional service firm offering both legal and non-legal professional services to the public, consistent with the lawyers' fundamental professional responsibility standards ("core values.") In this Report, the MDP Task Force presents the following findings for consideration by the Board of Governors of the State Bar of California ("Board") on this subject:

1. *In considering MDP, it should be viewed as just one point in the critical process necessary to evolve, develop and advance the systems by which legal services are delivered to the public with the goal of making legal services and the administration of justice accessible to all.*

2. *Although legitimate questions remain regarding how compelling the consumer demand for MDP is and how much MDP will advance the goals of improving the accessibility and quality of legal services, these questions were not considered to be within the Task Force's charge. The charge of the Task Force was to develop, as best it could, MDP models*

which would allow MDP and preserve the legal profession's "core values." The findings of the Task Force should be viewed in this context.

3. *There are existing practice models through which a form of indirect MDP currently exists in California and there are potentially viable models for permitting a "pure form" of MDP to exist in California.*

4. *To enhance existing indirect MDP models and implement a viable "pure form" MDP model in California, modifications of Rules of Professional Conduct and other authorities, including amendments to existing prohibitions against fee-sharing and partnerships with nonlawyers, can be effectuated without compromising the legal profession's "core values."*

5. *The "core values" of the legal profession must and can be maintained in an MDP environment. "Core values" can be effectively maintained through continued individual accountability of lawyers for fulfilling their professional responsibilities in all respects and through a required certification process for entities which seek to engage in a "pure form" of MDP.*

6. *As the administrative arm of the California Supreme Court in the certification of persons and entities authorized to practice law in California, it is appropriate for the State Bar of California to establish and administer a certification program for a "pure form" MDP model including rules and regulations which will bind MDP entities and subject the entities to decertification in the event of noncompliance with the governing rules and regulations.*

7. *The five MDP models identified by the ABA MDP Commission are not a definitive description of all possible MDP forms. Associations by which lawyers practice law are not static and will continue to evolve. The Task Force acknowledges the dynamic nature of the forms of practice by which professionals provide services to the public, and that the distinctions between the MDP models made by the Task Force cannot correspond perfectly to the dynamic actuality of the professional services market place. Nevertheless, the Task Force adopts the five MDP models identified by the ABA MDP Commission, described below, as the basis for its findings here.*

8. *In doing so, the Task Force deems three of these models to be indirect MDP models that are within existing standards, fully viable and currently*

extant without the need for significant changes in existing authorities. It deems the fourth model to be another indirect MDP form, finds it to be viable also, but currently prohibited under existing California authorities, requiring changes in existing authorities. It deems the fifth, Fully Integrated Model, to be a "pure form" MDP and is prepared to explore this model under a State Bar MDP Certification Demonstration Project where the integrated MDP entity would be certified by the State Bar, initially on an experimental basis, to engage in the practice of law.

9. *The models, described in more detail, are as follows:*

The Cooperative Model: *This model involves the rendition of legal services on a "stand alone" basis in "cooperation" with other nonlawyer service providers. This is the status quo in most states. While it allows for multidisciplinary services, it is not considered a "pure form" MDP by the Task Force. Fee-splitting and co-principal relationships with nonlawyers are prohibited. Lawyers are free to employ nonlawyer professionals under the lawyer's control to assist in providing legal services to clients. Lawyers are also free to work with nonlawyer professionals employed directly by clients. But the lawyers' services ultimately "stand alone" from all other services. Maintenance of the status quo allowing this practice to continue can occur consistent with "core values." This requires no changes in existing authorities.*

The Ancillary Business Model: *This model permits a law firm to own and operate an ancillary business entity that renders nonlegal services to clients of the law firm and to others. The entities, however, operate on a non-integrated basis. Legal services are provided on a "stand alone" basis. ABA Model Rule 5.7 on ancillary services, requires that recipients of the ancillary services understand that the ancillary business exists as an entity separate and distinct from the law firm. California does not currently have an ancillary business rule, but this model is not prohibited in California, subject to existing restrictions that assure that the separateness between the legal and non-legal services are adequately understood by the public. Although this also allows for a form of multidisciplinary services, it is not considered a "pure form" MDP by the Task Force. Clarifications in existing authorities to enhance the viability of this model in California can occur consistent with "core values."*

The Contract (Strategic Alliance) Model: *This model contemplates an express agreement between a law firm and a professional service firm*

setting forth various mutually beneficial terms. For example, the agreement might state that: (1) the law firm agrees to note its affiliation with the professional service firm on its law firm letterhead, business card, and other materials; (2) the law firm and the professional service firm will engage in mutual client referrals on a nonexclusive basis; or (3) the law firm agrees to purchase goods and services from the professional service firm such as equipment, communications technology, and staff management. This model, also called a " strategic alliance," like the above models, operates without fee-splitting and common equity interests. The legal services are provided on a "stand alone" basis. Although this model also allows for a form of multidisciplinary services, it is not considered a "pure form" MDP by the Task Force. This model is currently not prohibited by California authorities. Maintenance of the status quo allowing this practice to continue can occur consistent with "core values." This requires no changes in existing authorities. However, clarifications in existing authorities to enhance the viability of this model in California may be appropriate."

The Command and Control Model: *This model reflects the situation that currently exists in Washington, D.C., under its variation of ABA Model Rule 5.4. Lawyers are permitted to share law firm fees and equity interests with nonlawyers subject to specific limitations, including requirements that: (1) the activities of the firm be limited to the provision of legal services; (2) the involved nonlawyers agree to comply with the lawyers' rules of professional conduct; and (3) the lawyers, who are principals or who have management authority, take responsibility for the acts of the nonlawyers. Although fees and equity interests are shared with nonlawyers, all services are controlled by lawyers and relate directly to the rendition of legal services. Although this model also allows for a form of multidisciplinary practice within the confines of lawyer-controlled legal services, it is not considered a "pure form" MDP by the Task Force. This model requires changes in California's existing prohibitions on fee-sharing and partnering with nonlawyer professionals which the Task Force finds can be made consistent with "core values" to allow this model to be viable in California.*

The Fully Integrated Model: *This model is a single fully integrated professional services firm. The single firm has organizational components that provide legal services, consulting services, accounting services, and/or other professional services. It is marketed as a one-stop shopping center for clients interested in legal services and other professional services. The various services may be provided to a single client on a*

single matter or on multiple related or unrelated matters. Legal services may be provided independently of other services, and vice-versa, and may involve the lawyers seeking professional services for the client from the other professionals and vice-versa. This model is considered by the Task Force to be a "pure form" MDP model. It is now prohibited in California. The Task Force finds that this model can be explored on a Demonstration Project basis, subject to State Bar certification, and that changes can be made to existing authorities to allow such an entity to exist consistent with the legal profession's "core values."

10. *In the Fully Integrated Model, the Task Force finds that the "core values" of the legal profession not only can be maintained, but can be reaffirmed, through the principle that all professionals involved may not, by virtue of their integration with other professionals, reduce their responsibilities below those which apply to a non-integrated environment. The basic premise of the Fully Integrated Model adopted by the Task Force is two fold: First, is the cross-imputation of the values of all participating professionals to each other, without diminution, when integrated services are provided to consumers; Second is a presumption from the outset of the consumer's relationship with an integrated MDP, that integrated legal and non-legal services are being sought so that cross-imputation of values is the rule. Only when the consumer affirmatively "opts out" of legal services will the lawyer values cease to apply.*

11. *In considering the viability of making legal services more accessible through authorized new delivery systems like MDP, the Task Force also finds that it would be beneficial to develop, through a rule of court or rules of professional conduct, a concise definition of what constitutes the practice of law as is currently being considered by the State of Washington*.

12. *It is also considered necessary, in conjunction with the development of such new systems of legal services delivery, that the Board consider how to enhance protection of the public by stricter enforcement of the unauthorized practice of law as a consumer fraud issue.*

13. *The Task Force is also of the opinion that passive investment in a multidisciplinary, or other legal practice, should not be permitted*.

14. *The Task Force recommends that this Report be published for a ninety-day public comment period which actively seeks comment from consumers of legal services, so all interested parties can be*

heard regarding this important subject. Upon analysis of the public comment received, and in consultation with the California Supreme Court, the Task Force is prepared to assist the Board, as it determines appropriate, in moving forward with an implementation plan for these models.

TABLE OF CONTENTS

REPORT OF THE STATE BAR OF CALIFORNIA
MULTIDISCIPLINARY PRACTICE
TASK FORCE

I. TASK FORCE APPOINTMENT AND CHARGE

In May, 2000, then State Bar of California President Andrew Guilford announced the formation of a State Bar Multidisciplinary Practice ("MDP") Task Force. The announcement recounted that current rules governing California attorneys prohibit lawyers from sharing fees and working as co-principals with non-lawyer professionals (*e.g.*, accountants, doctors, architects) in rendering professional services; that it was becoming increasingly evident that these limitations on legal services delivery did not reflect the reality of the manner in which lawyers were working with other professionals in providing effective legal representation to the public; and that these limitations may have become hindrances in delivering effective legal services to the consuming public. In a call to explore the viability of new alternatives to the existing systems by which legal services are delivered to the public, President Guilford charged the MDP Task Force with determining whether there were viable MDP models for California which preserved the critical role of the attorney as an officer of the court in the administration of justice and preserved the "core values" of that role. Palmer Madden, current State Bar President, continued that charge to the MDP Task Force making the MDP issue one of the principal policy issues of his presidential term.

A. Members of the MDP Task Force

Kevin R. Culhane (Chair)

Former member, State Bar of California Board of Governors; former Chair, Board of Governors Committee on Attorney Discipline; former member, Judicial Council of California; currently a Sacramento attorney with the law firm of Hansen, Boyd, Culhane & Watson, LLP and Adjunct Professor of Law, University of the Pacific, McGeorge School of Law.

Joanne Garvey

San Francisco attorney with the law firm of Heller Ehrman; former member, State Bar of California Board of Governors; member, American Bar Association Board of Governors; ABA Board of Governor's former liaison to the American Bar Association's Commission on Multidisciplinary Practice.

JoElla Julien (Public Member)

School administrator; former public member, State Bar Standing Committee on Professional Responsibility and Conduct (COPRAC); public member, State Bar Commission on the Revision of the Rules of Professional Conduct.

Steve Milner

Orange County attorney and accountant; Managing Partner, Squar, Milner, Reehl & Williamson, an accounting and consulting firm.

Mark Tuft

San Francisco attorney with the law firm of Cooper White & Cooper; former member and Chair, COPRAC; co-author, Rutter Group publication, *California Practice Guide, Professional Responsibility*; former member, Bar Association of San Francisco Board of Directors.

Hon. Howard B. Wiener (Ret.)

Justice of the California Court of Appeal, Retired. Former member of the California State Bar Board of Governors. Co-author Rutter Group publications, *California Practice Guide, Professional Responsibility and Civil Appeals and Writs*.

Hon. Laurie D. Zelon

Judge, Los Angeles Superior Court; formerly of Morrison & Foerster; member and Chair, Access to Justice Commission; member, ABA Ethics 2000 Commission; former president, Los Angeles County Bar Association.

Special Liaisons: Diane Karpman (Los Angeles County Bar Association, Association of Professional Responsibility Lawyers); Robert M. Westberg (State Bar Standing Committee on Professional Responsibility and Conduct); Hon. Samuel L. Bufford (Los Angeles County Bar Association); Ann Wilson (California Association of Certified Public Accountants).

B. MDP Task Force Charter

The MDP Task Force was chartered to work closely with State Bar Staff to:

> Study the work that has been developed to date on the MDP issue, particularly the work of the American Bar Association Commission on Multidisciplinary Practice;

Determine whether there are viable MDP models for California which preserve the critical role of the attorney as an officer of the court in the administration of justice and preserve the "core values" of the that role;

Develop for the Board of Governors and for public comment any such models; and

Identify the authorities in California (Rules of Professional Conduct, Business & Professions Code and other statutes and authorities) which may need to be amended or implemented to allow any MDP models that are developed.

II. INTRODUCTION AND BACKGROUND

In its narrowest sense, the issue of MDP is a call to determine whether lawyers should be able to join with nonlawyer professionals as financial co-equals in a practice form which delivers mixed legal and non-legal professional services to consumers. This is now universally prohibited by the Rules of Professional Conduct.[1]

In its broadest sense, the issue is a call to consider whether the current traditional systems by which legal services are delivered to consumers are fully addressing consumer needs in the marketplace and, if not, what evolution and development of those delivery systems by the profession are warranted.

The practice of law is essentially an information-based professional service. A revolution is taking place in the use and delivery of all kinds of information, including legal information, to consumers. In the face of this revolution, the legal profession must determine whether its existing delivery systems are addressing consumer needs and market demand. Appearances would indicate that they are not. If this is so, leadership is required within the legal profession to redefine its delivery systems so as to more effectively serve client needs as defined by the existing and future market place.

In California, there are indicators that change in the existing legal services delivery systems is overdue. These indicators include: increases in unserved consumers; court intervention in the form of facilitated and *propria personae* assistance services to litigants chronically unrepresented by counsel (see *e.g.*, Family Code sections 10000 & 15010); proliferation of self-help legal guides; consumer response to internet-based legal assistance; and increasing consumer reluctance to use traditional legal service delivery systems. MDP's are just one aspect of this much larger delivery system issue.

It is important that the MDP discussion not be misunderstood to be of interest only to large accounting and law firms. The many points of commonality that exist between accounting practice and tax law make the accountancy-law conjunction a fertile field for the MDP debate and, indeed, this is where the discussion was largely focused initially. But MDP has meaningful implications for a wide spectrum of attorneys and clients far removed from the large accounting and law firms. Family law, estate and trust planning, environmental law, international law, and business law, are just a few of the areas where relationships with nonlawyer professionals in a multidisciplinary environment of one kind or another is both commonplace and conducive to the adequate representation of client interests.

Although this Report is limited to a narrow consideration of MDP, the Task Force believes that it is important to view the MDP discussion as part of the larger issue of how the legal profession can fully address the consumer's need for legal services while, at the same time, preserving the "core values" of the legal profession and its critical role in the administration of justice.

A. History of Consideration

1. The ABA Commission on Multidisciplinary Practice

On August 4,1998, the incoming president of the ABA, Philip S. Anderson, announced the appointment of an ABA MDP Commission to study and report on the extent to which and the manner in which non-attorney professional service firms were seeking to provide legal services to the public. At the time of his announcement, Anderson commented that "the Big-5 accounting firms have been acquiring law firms in Europe, and have added legal services to their list of client offerings....This commission has a mandate to look at these issues from the standpoint of the public's best interests."[2] The appointment of the ABA MDP Commission and its subsequent study sparked an intense debate within the legal profession as to whether MDP should to be permitted.

2. An International Dimension

Although the consideration of MDP in this country is a relatively new issue, MDP has a longer international history. Far from all countries have embraced MDP and those that have implemented it, have done so in widely varied ways.[3]

Also a factor in the international MDP discussion is the role of international trade treaties. Under the 1994 General Agreement on Trade in Services ("GATS"), barriers to trade, including trade in professional services, among signatory nations is prohibited. It remains to be seen how state restraints on MDP will be addressed under the preemptive mandate of the federal treaty power pursuant to which GATS and similar trade treaties are adopted.[4]

3. The ABA MDP Commission's Background Paper and Five Models

After its 1998 creation, the ABA MDP Commission set out to gather data on the MDP phenomenon. To focus the discussion, the ABA MDP Commission, in January of 1999, issued a Background Paper that identified the five MDP models which encompassed the range of MDP practice forms and are adopted by the Task Force as the basis for this Report. These models: The Cooperative Model, The Command and Control Model, The Ancillary Business Model, The Contract (Strategic Alliance) Model and the The Fully Integrated Model are described in more detail in Section IV [Task Force Findings on MDP Issues].

Although each of these models was presented by the ABA Commission as a possible basis for state implementation, the Fully Integrated Model garnered the most attention in written comment and testimony received by the ABA MDP Commission on its Background Paper.

4. The ABA MDP Commission's 1999 Report and Recommendation

In June 1999, the ABA MDP Commission published its Report and Recommendation, recognizing that four of the five models it identified could exist in various forms under current authorities and urging the ABA House of Delegates to take action to endorse the concept of the fifth, Fully Integrated MDP model at the 1999 ABA Annual Meeting in Atlanta.[5] The report and recommendation sought to eliminate the prohibition against fee-sharing and partnerships with nonlawyers in the context of a MDP entity which would be regulated by a state's highest court possessing authority to regulate the legal profession. The proposed MDP entity could be either lawyer-controlled or nonlawyer- controlled. When the report was issued, Sherwin Simmons, Chair of the ABA MDP Commission,

commented that the proposed changes were intended to allow clients more options in obtaining legal services, and lawyers more choices in how they serve clients, but still maintain the "core values" of the legal profession and the protections those values guarantee the public and clients.

Although the discussion of the Fully Integrated Model, raised issues of the unauthorized practice of law and passive investment in the practice of law, the identification of the "core values" of the legal profession in the report is regarded as its focal point. The ABA MDP Commission premises its endorsement of a Fully Integrated MDP Model on the belief that the "core values" of the legal profession represent the essence a lawyer's special role in the administration of justice and are the imperatives that clients justifiably rely upon when seeking legal services. Moreover, the ABA MDP Commission's report finds that "core values" need not be placed at risk if a MDP entity complies with appropriate state certification procedures.

In the 1999 report, the ABA MDP Commission identifies the following three core values of the legal profession: (1) Professional Independent Judgment; (2) Protection of Confidential Client Information; and (3) Loyalty to Clients through Avoidance of Conflicts of Interest.

5. The1999 ABA Annual Meeting in Atlanta

When the 1999 report was presented at the ABA Annual Meeting in Atlanta, there was opposition from some members of the House of Delegates, including some state bar associations[6] and ABA groups. Due to this opposition, the Chair of the ABA MDP Commission did not seek House action on the merits of the recommendation and instead moved to have action deferred. Although deferral was sought, debate on the merits was conducted and after the debate, the House adopted the following resolution:

> RESOLVED, that the American Bar Association make no change, addition or amendment to the Model Rules of Professional Conduct which permits a lawyer to offer legal services through a multidisciplinary practice unless and until additional study demonstrates that such changes will further the public interest without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients.

Commentators have observed that this resolution does more than merely postpone consideration of the merits.[7] The resolution states explicit preconditions for ABA

endorsement of rule amendments aimed at permitting MDP; namely, that it must be demonstrated that any such rule amendments will "further the public interest without sacrificing or compromising lawyer independence and the legal profession's tradition of loyalty to clients."

6. The ABA MDP Commission's 2000 Recommendation and Report

To meet the charge of the House resolution passed in response to its 1999 recommendation, the ABA MDP Commission conducted further public hearings and solicited additional written comment. The ABA MDP Commission issued an updated Background report in December 1999 to facilitate its further study. At the February 2000 ABA Midyear Meeting in Dallas, an ABA Town Hall Meeting was conducted and broadcast over the ABA's website.[8]

On March 22, 2000, the ABA MDP Commission issued a "Draft of a Possible Recommendation to the ABA House of Delegates."[9] This draft recommendation revealed a narrower proposal than that contained in the 1999 report. On May 15, 2000, the ABA MDP Commission posted a final version of its 2000 Recommendation and Report at the ABA's official website.[10] The 2000 Recommendation stated:

> RESOLVED, that the American Bar Association amend the Model Rules of Professional Conduct consistent with the following principles:
>
> 1. Lawyers should be permitted to share fees and join with nonlawyer professionals in a practice that delivers both legal and nonlegal professional services (Multidisciplinary Practice), provided that the lawyers have the control and authority necessary to assure lawyer independence in the rendering of legal services. "Nonlawyer professionals" means members of recognized professions or other disciplines that are governed by ethical standards.
>
> 2. This Recommendation must be implemented in a manner that protects the public and preserves the core values of the legal profession, including competence, independence of professional judgment, protection of confidential client information, loyalty to the client through the avoidance of conflicts of interest, and *pro bono publico* obligations.

3. Regulatory authorities should enforce existing rules and adopt such additional enforcement procedures as are needed to implement these principles and to protect the public interest.

4. The prohibition on nonlawyers delivering legal services and the obligations of all lawyers to observe the rules of professional conduct should not be altered.

5. Passive investment in a Multidisciplinary Practice should not be permitted.

The 2000 recommendation was nearly identical to the March draft recommendation. The accompanying report made clear that lawyer control and authority should be a condition precedent to allowing fee-sharing and partnerships with nonlawyers in any MDP regulatory structure. The discussion noted that the potential for civil liability served as a meaningful incentive for lawyers to maintain control and authority in a MDP setting.

Beyond the control and authority principle, the 2000 report addressed: (1) the inclusion of "competence" and "*pro bono publico* obligations" as "core values" of the legal profession; (2) the continuation of existing prohibitions against third party passive investment in MDP's; and (3) the meaning of "professional services."

The report ended with an update on the international MDP scene, noting that outside the United States, the "Big Five" accounting firms were expanding their presence in the global marketplace as a provider of legal services. The ABA MDP Commission closed its report by stating that it was "imperative that the legal profession respond in the immediate future to unprecedented challenges ranging from the blurring of the boundaries between law and other disciplines, significant client dissatisfaction with the current delivery mechanisms for legal services, and the globalization of the economy. "

7. The 2000 ABA Annual Meeting in New York

At the 2000 ABA Annual Meeting in New York, the ABA MDP Commission again called for postponement of House of Delegates action on its recommendation endorsing a fully integrated MDP model.[11] Opponents of the ABA MDP Commission's recommendation, including the Illinois State Bar; New Jersey State Bar; New York State Bar; the Florida Bar; Ohio State Bar; Erie County Bar; and Cuyahoga County Bar sponsored Recommendation

10F which was ultimately adopted by the House of Delegates by a vote of 314 to 106. The full text of the resolution is as follows:

> RESOLVED, that each jurisdiction is urged to revise its law governing lawyers to implement the following principles and preserve the core values of the legal profession:
>
> 1. It is in the public interest to preserve the core values of the legal profession, among which are:
>
>   a. The lawyer's duty of undivided loyalty to the client;
>   b. The lawyer's duty competently to exercise independent legal judgment for the benefit of the client;
>   c. The lawyer's duty to hold client confidences inviolate;
>   d. The lawyer's duty to avoid conflicts of interest with the client;
>   e. The lawyer's duty to help maintain a single profession of law with responsibilities as a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice;
>   f. The lawyer's duty to promote access to justice.
>
> 2. All lawyers are members of one profession subject in each jurisdiction to the law governing lawyers.
>
> 3. The law governing lawyers was developed to protect the public interest and to preserve the core values of the legal profession that are essential to the proper functioning of the American justice system.
>
> 4. State bar associations and other entities charged with attorney discipline should reaffirm their commitment to enforcing vigorously their respective law governing lawyers.
>
> 5. Each jurisdiction should reevaluate and refine to the extent necessary the definition of the "practice of law."
>
> 6. Jurisdictions should retain and enforce laws that generally bar the practice of law by entities other than law firms.

7. The sharing of legal fees with non-lawyers and the ownership and control of the practice of law by nonlawyers are inconsistent with the core values of the legal profession.

8. The law governing lawyers, that prohibits lawyers from sharing legal fees with nonlawyers and from directly or indirectly transferring to nonlawyers ownership or control over entities practicing law, should not be revised.

FURTHER RESOLVED that the Standing Committee on Ethics and Professional Responsibility of the American Bar Association shall, in consultation with state, local and territorial bar associations and interested ABA sections, divisions, and committees undertake a review of the Model Rules of Professional Conduct ("MRPC") and shall recommend to the House of Delegates such amendments to the MRPC as are necessary to assure that there are safeguards in the MRPC relating to strategic alliances and other contractual relationships with nonlegal professional service providers consistent with the statement of principles in this Recommendation.

FURTHER RESOLVED that the American Bar Association recommends that in jurisdictions that permit lawyers and law firms to own and operate nonlegal businesses, no nonlawyer or nonlegal entity involved in the provision of such services should own or control the practice of law by a lawyer or law firm or otherwise be permitted to direct or regulate the professional judgment of the lawyer or law firm in rendering legal services to any person.

FURTHER RESOLVED that the Commission on Multidisciplinary Practice be discharged with the Association's gratitude for the Commission's hard work and with commendation for its substantial contributions to the profession.

This, in essence, moved the MDP discussions from the MDP Commission to the ABA Standing Committee on Ethics and Professional Responsibility.[12] MDP continues to be considered a major issue facing the legal profession and is or has been the subject of intense study by state and local bar associations across the nation.

B. MDP Activities in the States

At the state level, continued interest in resolving MDP issues is only part of the many "delivery system" challenges that are confronting the profession: multijurisdictional practice (MJP), unbundled or discrete issue legal representation, court facilitated legal assistance, *propria personae* assistance, paralegal and other paraprofessional regulation are all reflective of efforts to address the unmet market demand for legal services.[13]

It has been widely suggested that *defacto* MDP entities, together with other non-traditional forms for delivering legal services, are prevalent.[14] For example, McKee Nelson Ernst & Young was established as a Washington, D.C., law firm financed by and housed within Ernst & Young's D.C. offices (reflecting the "Contract" Model identified by the ABA MDP Commission study).[15] Washington, D.C., is arguably a unique circumstance because it is the only jurisdiction to have adopted a version of ABA Model Rule 5.4 that permits fee-sharing and partnerships between lawyers and nonlawyers (reflecting the ABA Commission's "Command and Control" Model). Outside Washington, D.C., the absence of a specific rule has not been an obstacle to so-called "strategic alliances" between lawyers and accountants. KPMG has allied itself with several law firms, including California-based Morrison & Foerster, LLP.[16]

According to the ABA's Center for Professional Responsibility, as of May 2001, of the fifty-one United States jurisdictions (including Washington D.C.), eleven had completed their MDP studies and rendered reports in favor of some form of MDP (Arizona, Colorado, Washington D.C., Georgia, Maine, Minnesota, North Carolina, South Carolina, South Dakota, Utah, Wyoming), fifteen had completed their MDP studies opposing MDP (Arkansas, Florida, Illinois, Kansas, Kentucky, Maryland, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, West Virginia), and the remainder had either not completed their study or had declined to study the area.[17]

III. CALIFORNIA'S PERSPECTIVE ON THE PRESERVING THE "SPECIAL" ROLE OF LAWYERS

A recurring theme in the ongoing MDP debate is the concept that lawyers play a "special" role in the administration of justice. Lawyers, as members of a learned profession within the judicial branch of government, have traditionally been distinguished from both commercial purveyors of non-professional services and other professionals who, unlike lawyers, are not part of the judicial branch of government. The "shorthand" statement for

this is that lawyers are “officers of the court.” This means that lawyers do not simply provide services to clients but do so consistent with their duty to preserve the adversary system of justice and a fair and independent judicial system as a viable check and balance in this country’s system of government.

This does not imply that lawyers are more important or valuable than other professionals. It merely means that lawyers have values and duties that have traditionally resulted in lawyers being segregated from other professionals and regulated by the judicial branch of government as opposed to the executive branch of government, which regulates most, if not all, other licensed professionals. Courts have long recognized this. The case of In re Lavine (1935) 2 Cal.2d 324, 327-28, serves as a good starting point:

> The decisions of this court indicate, and they are supported by a wealth of authority from other jurisdictions, that the right to practice law not only presupposes in its possessor integrity, legal standing, and attainment, but also the exercise of a special privilege, highly personal and partaking of the nature of a public trust [citations omitted], the granting of which privilege to an individual is conceded to be the exercise of a judicial function [citations omitted].

A more elaborate discussion is found in State ex rel. Florida v. Murrell (Fla. 1954) 74 So.2d 221, 224, 226:

> The lawyer is an officer and right arm of the court in the administration of justice, he [she] has the major responsibility for making and administering the law of the nation, the State, the county, and lesser governmental entities. He [She] is the trustee of his [her] client and is expected to execute that trust in obedience to the Canons of the profession, the constitution of his [her] State and the United States. His [Her] relation to this client is fiduciary and his [her] integrity should be of that discriminating quality that he [she] readily distinguishes where his [her] duty to client and his [her] duty to country clash; and if it does, he [she] will be led by the higher duty to country.
>
> * * *
>
> [T]here are differences that distinguish those who administer justice from those who sell goods, the canons clearly point out these differences. The

> law is not a business, – it is a profession, a noble one, with standards in certain respects different from those applicable to business, which standards it is the duty of the bar to uphold.

Very recently, the California Supreme Court in In re Attorney Discipline System (1998) 19 Cal.4th 582, 592-93, affirmed its characterization of lawyers as professionals who are a part of the judicial branch.

> Since the 'courts are set up by the Constitution without any special limitations' on their power, they ' have . . . all the inherent and implied powers necessary to properly and effectively function as a separate department in the scheme of our state government. [Citations omitted.]
>
> * * *
>
> An attorney is an officer of the court and whether a person shall be admitted [or disciplined] is a judicial, and not a legislative, question. [Citations omitted.]
>
> * * *
>
> The important difference between regulation of the legal profession and regulation of other professions is this: Admission to the bar is a *judicial function*, and members of the bar are *officers of the court*, subject to discipline by the court. Hence, under the constitutional doctrine of separation of powers, the court has inherent and *primary regulatory power.* [Citations omitted; Original italics.]

Although lawyers have a "special" role which has resulted in their being distinguished from other professionals, it is recognized that the "special" role of lawyers does not immunize them from the realities and economics of the professional service market place. In Howard v. Babcock (1993) 6 Cal.4th 409, the California Supreme Court found that the ethical prohibition against agreements restricting a lawyer's practice of law (California Rule of Professional Conduct 1-500) did not prevent the enforceability of non-competition covenants among law firm equity holders. In so holding, the Supreme Court made several cogent observations about the realities of modern legal practice:

The traditional view of the law firm as a stable institution with an assured future is now challenged by an awareness that even the largest and most prestigious firms are fragile economic units.... [Citations omitted] (Id. at 420.)

* * *

Institutional loyalty appears to be in decline. Partners in law firms have become increasingly 'mobile,' feeling much freer than they formerly did and having much greater opportunity than they formerly did, to shift from one firm to another and take revenue producing clients with them. [Citations omitted] (Id. at 421.)

* * *

Recognizing these sweeping changes in the practice of law, we can see no legal justification for treating partners in law firms differently in this respect from partners in other businesses and professions. (Id.)

* * *

Moreover, the contemporary changes in the legal profession to which we have already alluded make the assertion that the practice of law is not comparable to a business unpersuasive and unreflective of reality. Commercial concerns are now openly recognized as important in the practice of law. Indeed, we question whether any but the wealthy could enter the profession if it were to be practiced without attention to commercial success. In any event, no longer can it be said that law is a profession apart, untouched by the marketplace. Not only has law firm culture changed but, as in other businesses, lawyers now may advertise their services and may even communicate by letter with persons unknown to them, suggesting the possibility of employment. [Citations omitted.] . . . ¶The same relaxation of the traditional rule against treating a law practice as comparable to a business can be seen in the development of the rules regarding sale of goodwill in a law firm. [Citations omitted] (Id. at 423.)

* * *

> It seems to us unreasonable to distinguish lawyers from other professionals such as doctors or accountants, who also owe a high degree of skill and loyalty to their patients and clients. The interest of a patient in a doctor of his or her choice is obviously as significant as the interest of a litigant in a lawyer of his or her choosing. [Citations omitted] (Id. at 424.)
>
> * * *
>
> We are confident that the interest of the public in being served by diligent, loyal and competent counsel can be assured at the same time as the legitimate business interest of law firms is protected by an agreement placing a reasonable price on competition. . . . ¶ We seek to achieve a balance between the interest of clients in having the attorney of choice, and the interest of law firms in a stable business environment. (Id. at 425.)
>
> * * *
>
> It is not our intent to relegate clients to the position of commodities, nor to elevate commercial concerns over the lawyer's bedrock duty of loyal and vigorous advocacy on behalf of the client. Rather, we have exercised our duty to regulate the practice of law with a care to understanding the world as it is, uninfluenced by rhetoric that appears to obscure, rather than clarify, the problem. We are confident that our opinion will leave the lawyer's professional duties to his or her clients undisturbed, and that clients will enjoy the same degree of choice in retaining attorneys as they have always possessed. (Id. at 425-26.)

In terms of MDP, the language in Babcock indicates that there are limits on the extent to which lawyers must be treated differently from other professionals. At the same time, however, the Supreme Court confirms:

> This court has the authority to prescribe rules of professional conduct for attorneys as part of its inherent power to regulate the practice of law. [Citations omitted.] It is in our power to impose a higher standard of conduct on lawyers than that applicable to other professionals. [Citations omitted.] (Id. at 418.)

This express reservation of the inherent authority to impose higher standards on lawyers despite prevailing commercial influences is meaningful especially when the views expressed by Justice Kenard's dissenting opinion are taken into consideration:

> The majority insists that 'a revolution in the practice of law has occurred requiring economic interests of the law firm to be protected as they are in other business enterprises.' [Citations omitted.] The majority says that changes in the economics of law practice 'make the assertion that the practice of law is not comparable to a business unpersuasive and unreflective of reality. [Citations omitted.] I do not accept the majority's conclusion that 'a new reality in the practice of law' [citations omitted] justifies its erosion of legal ethical standards. ¶ Although the law is a business in the sense that an attorney in a law firm earns a living by practicing law, it is also and foremost a profession, with all the responsibilities that word implies. The ethical rule that this court is called upon to interpret exists to enforce the traditional and sound view that service to clients, including protection of the clients' ability to employ the attorneys they have come to trust, is more important than safeguarding the economic interests of established attorneys and law firms. (Id. at 426-27.)
>
> * * *
>
> I cannot accept that the practice of law has been so altered that it is now irretrievably profit-centered rather than client-centered. If ethical rules for attorneys must accommodate the "realities" of practicing law, then those realities ought to include this court's insistence that attorneys serve more than their own interests and accomplish more than amassing fees. Protection of the public and preservation of public respect for the law require no less. (Id.)
>
> * * *
>
> One of the objectives beyond economic success that defines the law as a profession is the recognition that the attorney-client relationship requires the acceptance, within the bounds of ethical propriety, of the principle that the client's fundamental rights are superior to the interests of the attorney. ¶ The attorney-client relationship involves more than monetary considerations. An

> attorney is a fiduciary of the "very highest character." [Citations omitted.] By the very nature of the relationship, an attorney owes the client a duty to act with the highest good faith. [Citations omitted.] Consistent with the fiduciary nature of the relationship, the duty of the attorney includes placing the interest of the client above his or her own interest. . . .And, consistent with the unique relationship between attorney and client, the client's right to retain counsel of his or her choice is superior to the interest of the attorney. [Citations omitted.] (Id. at 430-31).
>
> * * *
>
> As Chief Justice Rehnquist of the United States Supreme Court has observed: 'It is only natural, I suppose, that as the practice of law in large firms has become organized on more and more of a business basis, geared to the maximization of income, this practice should on occasion push towards the margins of ethical propriety. Ethical considerations, after all, are factors which counsel *against* maximization of income in the best Adam Smith tradition, and the stronger the pressure to maximize income the more difficult it is to avoid the ethical margins.' (Rehnquist, The Legal Profession Today (1986) 62 Ind. L.J. 151, 154, italics in original.) In my view, the increasing pressures to weaken the rules of professional ethics generated by the emphasis on maximizing income require more, not less, vigilance by this court to preserve the practice of law as a profession and to protect the public. ¶ If the practice of law is to remain a profession and retain public confidence and respect, it must be guided by something better than the objective of accumulating wealth. . . . Here, . . . the majority diminishes the rights of clients in favor of the financial interest of law firms based on its one-sided view of the realities and equities of the practice of law. (Id. at 434.)

As professionals consider joining together with lawyers in an MDP environment, there will have to be an acceptance of the "core values" of the legal profession, which distinguish the practitioners of law as a judicial branch licensees. There will also have to be acceptance by lawyers of the "core values" of the other professionals within an MDP which do not conflict with the legal profession's "core values." This will require the MDP in which lawyers and nonlawyers participate to have limits on its business practices which come as a "cost of doing business" together.

IV. TASK FORCE FINDINGS ON MDP ISSUES

A. Preliminary Issues

How do we define "MDP" in California?

The definition of "MDP" proposed and utilized by the Task Force is limited to a Fully Integrated form of practice in which legal services and non-legal professional services are provided, the lawyer professionals share profits and are co-owners with the non-lawyer professionals, and where passive investment in the entity is not permitted. The concept of integration, in this MDP definition, is one of integration of people while maintaining an identifiable separation of services.

The definition of MDP proposed by the Task Force excludes the Cooperative, Ancillary Business, and Contract or Strategic Alliance model developed by the ABA. It also excludes the Command and Control model permitted in Washington D.C., which allows fee-sharing and partnerships between lawyers and non-lawyers in a law firm. The ABA included these in their more generic definition of MDP. The Task Force's definition also excludes in-house counsel models. Because these models all provide for the predominance of lawyers over the rendition of legal services and are viable models under existing authorities or with changes to existing authorities which do not materially increase the risk to "core values," the Task Force has focused upon the more troublesome Fully Integrated Model as being worthy of exploration in a Demonstration Certification Program.

The Task Force acknowledges that the practice forms by which lawyers and other professionals provide their services to the public are not static. The distinctions between the identified MDP models do not correspond perfectly to the dynamic actuality of an ever-evolving professional services market place. Nevertheless, the Task Force is satisfied that the following models provide a sufficiently concrete framework upon which to base this Report:

The Cooperative Model: This model involves the rendition of legal services on a "stand alone" basis in "cooperation" with other non-lawyer service providers. While it allows for multidisciplinary services, it is not considered a "pure form" MDP by the Task Force. Fee-splitting and co-principal

relationships with non-lawyers are prohibited. Lawyers are free to employ non-lawyer professionals under the lawyer's control to assist in providing legal services to clients. Lawyers are also free to cooperate with non-lawyer professionals employed directly by clients. But the lawyers' services ultimately "stand alone" from all other services. "Core values" are maintained as they are currently in a lawyer-controlled service environment.[18]

The Ancillary Business Model: This model permits a law firm to own and operate an ancillary business entity that renders non-legal services to clients of the law firm and to others. The entities, however, operate on a non-integrated basis. The legal services are provided on a "stand alone" basis. ABA Model Rule 5.7 on ancillary services, requires that recipients of the ancillary services understand that the ancillary business exists as an entity separate and distinct from the law firm. California does not currently have an ancillary business rule, but this model is not prohibited in California, subject to existing restrictions that assure that the separateness between the legal and non-legal services are adequately understood by the public. Although this model allows for indirect multidisciplinary services, it is not considered a "pure form" MDP by the Task Force. "Core values" are maintained as they are currently in a lawyer-controlled services environment.[19]

The Contract (Strategic Alliance) Model: This model contemplates an express agreement between a law firm and a non-law professional service firm setting forth various mutually beneficial terms. For example, the agreement might state that: (1) the law firm agrees to note its affiliation with the professional service firm on its law firm letterhead, business card, and other materials; (2) the law firm and the professional service firm will engage in mutual client referrals on a non-exclusive basis; or (3) the law firm agrees to purchase goods and services from the professional service firm such as equipment, communications technology, and staff management. This model is also referred to as a "strategic alliance." Like the above models, this model also operates without fee-splitting and common equity interests and the legal services are provided on a "stand alone" basis. Although this model allows for indirect multidisciplinary services, it is not considered a "pure form" MDP by the Task Force. "Core values" are maintained as they are currently in a lawyer-controlled service environment.

The Command and Control Model: This model reflects the status quo in Washington, D.C., under its variation of ABA Model Rule 5.4. Lawyers are permitted to share law firm fees and equity interests with non-lawyers, subject to specific limitations, including requirements that: (1) the activities of the firm are limited to the provision of legal services; (2) the involved non-lawyers agree to comply with the lawyers' rules of professional conduct; and (3) the lawyers who are principals or who have management authority take responsibility for the acts of the non-lawyers. Although fee-splitting and equity interests are shared with non-lawyers, all services are controlled by lawyers and relate directly to the rendition of legal services. Non-legal services are not rendered by this entity. Although this model also allows for indirect multidisciplinary practice within the confines of lawyer-controlled legal services, it is not considered a "pure form" MDP by the Task Force.

The Fully Integrated Model: This model is a single fully integrated professional services firm which may or may not be lawyer-controlled. The single firm has organizational components that provide legal services, consulting services, accounting services, and other professional services. The various services may be provided to a single client on a single matter or on multiple related or unrelated matters. Legal services may be provided independently of other services, and vice-versa, and may involve the lawyers seeking professional services for the client from the other professionals and vice-versa. This model is considered by the Task Force to be a "pure form" MDP model.

The hallmark of this model is two fold: First, in order for services to be integrated in this model, the values of each participating professional are to be fully cross-imputed. An MDP's guiding values are to be no less than the combined values of each participating professional. The full imputation of each professional's values to the end product results in the consumer benefitting from the highest combined professional standards; Second, is the assumption, from the outset of the relationship, that fully integrated services and professional values are being sought by the consumer unless the consumer affirmatively "opts out" of integrated services.

Can MDP's be allowed in California consistent with "core values"?

Yes. "Core values" are preserved by the individual responsibility of each lawyer to maintain "core values," by the State Bar certification requirement for the Fully Integrated MDP Model, by the requirement that where integrated services are provided in the Fully Integrated Model, the values of all participating professionals fully apply without diminution, and by the requirement that if integrated services are not being provided at any point, this is clear to all through an affirmative "opt out" procedure.

What are the "core values" of the legal profession?

Consistent with approach taken by the ABA and others, the Task Force identifies the following as "core values": independence of professional judgment, preservation of the duty of loyalty through regulation of conflicts of interest, preservation of the duty of confidentiality, preservation of the duty of competence, preservation of the attorney's role in the administration of justice as an officer of the court and in ensuring access to justice and the availability of legal representation.

B. The Models

Using the ABA Models, what forms of MDP can be allowed in California consistent with the profession's "core values"?

Cooperative, Ancillary Business and Contract Models

As long as these models maintain absolute lawyer control over the provision of legal services and assure that the entity through which legal services are provided is separately authorized to render legal services and is separately accountable for the rendition of those services, as is currently required, the Task Force concludes that "core values" can be preserved in these forms of practice:

The Cooperative Model: Maintenance of the status quo allowing this practice to continue can occur consistent with "core values." This requires no changes in existing authorities. "Core values" are maintained in the manner they are currently through lawyer control of legal services.

The Ancillary Business Model: Continued viability of this model can occur consistent with "core values." In 1983, the then State Bar Board Committee on Admissions and Competence considered a COPRAC report and recommendation that a form of ABA Model Rule 5.7 not be adopted in California. Subsequently, COPRAC promulgated State Bar Formal Opinion No. 1995-141 which finds that this type of activity is permissible under existing California authorities if care is taken to assure that the separateness of the activities of the two involved entities are fully understood by the public. This requires no changes in existing authorities. However, clarifications in these authorities would enhance the viability of this model.

The Contract (Strategic Alliance) Model: Continued viability of this model can occur consistent with "core values." This requires no changes in existing authorities. However, clarifications in these authorities would enhance the viability of this model.

Command and Control Model

As long as this model limits its activities to the provision of legal services by lawyers, the Task Force concludes that "core values" are preserved in this form of practice. This model requires changes in California's existing prohibitions on sharing fees and equity interests with non-lawyer professionals, but in an environment strictly limited to the rendition of legal services. These changes can occur consistent with "core values" to allow this model to be fully viable in California.

In these four models, how are "core values" preserved?

In these models, the attorney standards always dominate to preserve "core values".

In these four models, if there is a conflict between the values of the attorney and the non-attorney, which values prevail?

In these four models, the attorney's values always prevail with respect to the rendition of legal services.

In these four models, may non-legal services be provided?

Yes, in the Cooperative, Ancillary Business and Contract Models but only where they are provided separately by the non-lawyer professionals, or where the lawyers assume lawyer liability for the rendition of those services. Non-legal services may not be provided in the Command and Control Model as the definition of that model confines it to rendering only legal services.

What about the Fully Integrated Model?

The Task Force concludes that "core values" can not only be protected in the Fully Integrated Model, they can be reaffirmed by fully cross-imputing to all professionals in the MDP the values of all participating professionals. Where "core values" conflict, integrated services cannot be provided. The consuming public receives the benefit of the highest degree of combined professional responsibilities. This model is now prohibited in California and all other jurisdictions. This model can be explored on a Demonstration Project basis, subject to State Bar certification. Changes can be made to existing authorities to allow such an entity to exist, on an experimental basis, and still maintain the legal profession's "core values".

C. Fully Integrated MDP Certification Demonstration Project

What, if any, certification/regulatory provisions should govern the four "non-integrated" MDP models?

No more than currently exists. The Cooperative, Ancillary Business, Contract and Command and Control Models can exist within the existing regulatory frame work. Changes to the fee-sharing and partnering rules can be made in the limited context of the Command and Control Model with no diminution in "core values." Lawyer disciplinary and civil liability will be determined through the existing processes. Lawyers, individually, will be fully accountable for maintaining the separateness of the legal services provided, assuring the client is served consistent with the lawyers' fiduciary responsibilities, and assuring that the "core values" of the legal profession are maintained. To the extent deemed appropriate, clarifications to the governing authorities can be promulgated through ethics opinions and other means to address any lack of clarity regarding these forms of practice that may exist or develop.

What certification/regulatory provisions should govern the Fully Integrated MDP Model?

The Task Force finds that The Fully Integrated Model can be implemented, consistent with "core values," on an experimental Demonstration Project basis, subject to certification by the State Bar as a Form of Practice with governing rules developed and adopted by the State Bar of California and approved by the Supreme Court.

Would the same governing rules pertain to all MDP's or would different rules apply depending upon the nature of the MDP practice?

The Task Force distinguishes between the four lawyer-controlled non-integrated models and the Fully Integrated Model. Where lawyers provide legal services along with other professionals in a Cooperative, Ancillary Business, Contract or Command and Control Model, where lawyer control and non-integration of services is the hallmark, there is no need for any further registration, certification or licensing requirements than currently exists. The lawyer-controlled nature of the enterprise makes the lawyers individually accountable for the nature of the services provided to the client and assures that "core values" and public protection will be preserved.

In the Integrated Model, however, the integration of lawyers and non-lawyer professionals providing mixed legal and non-legal services in the same entity, requires particularized oversight by the State Bar, which is available in an Integrated MDP Certification Program.

Within the Integrated Model the Task Force sees no need for applying different standards to a certified Fully Integrated MDP based on differences in the type of services that are provided in the MDP environment. The same certification requirements could apply to all certified Integrated MDP's.

Would the certified Fully Integrated MDP be allowed as a partnership, law corporation, limited liability partnership or other form of practice?

An Integrated MDP would be allowed to exist as any of the established forms of practice as long as the governing rules of the chosen forms of practice (including the MDP requirements) are satisfied. This will require adjustments to these authorities to recognize this new practice form.

As part of the Integrated MDP certification requirements, would errors and omissions coverage (or other financial responsibility conditions) be required as it is with LLP's and law corporations?

Yes. This would be so with all Integrated MDP's even if they were not law corporations and LLP's.

Non-Integrated MDP's would continue to be governed by the standards applicable to the form of practice through which the lawyers were providing legal services.

To what and whom would the Integrated MDP Certification Apply?

Individual members of an Integrated MDP would be subject to the regulatory requirements and jurisdiction of their respective licenced professions. The Integrated MDP entity would be subject to the certification and certification revocation procedures of the State Bar's MDP Certification Program. All would also be subject to the civil liability standards applicable to the professional services rendered.

Would the State Bar be responsible for disciplining the non-lawyer professionals?

No. If a breach of "core values" occurred, the MDP would be subject to decertification, resulting in the loss of its legal entitlement to operate. The lawyers would be subject to State Bar discipline under existing standards. The non-lawyer professionals would be referred to their licensing agency for whatever action that agency deems appropriate.

Who could participate in a certified Integrated MDP?

Under the Demonstration Program, Integrated MDP participants would be limited to "professionals" as defined in existing state wage and hour laws (*i.e.*, ***licensed*** professionals in law, medicine, dentistry, pharmacy, optometry, architecture, engineering, teaching, accounting or another traditionally recognized "learned" profession), enhanced by the requirement that the licensed "profession" maintain a code of professional ethics or professional responsibility compatible with the legal profession's "core values." Initially, under the Demonstration Program, certification could be limited to one or more areas where interest has been demonstrated (*e.g.*,

accountancy). Licensed "professionals" not included in the Demonstration Program initially or not specifically identified above, would have a procedural mechanism to petition to become certified upon an appropriate showing. The Demonstration Program could then be expanded or eliminated depending upon the empirical result (similar to the approach taken with the existing Legal Specialization Program in its early development).

There would be no similar limitations on those participating in the four non-integrated MDP models. As the participating lawyers are in control of the legal services being provided in these models, the lawyers' existing duty to supervise others and otherwise assure client protection sufficiently addresses the issue without further limitations or certification requirements.

Would lawyers and non-lawyer professionals licensed in other states be allowed to practice as part of a certified Integrated MDP in California?

Yes, as long as they satisfy California's licensure, MDP certification and other relevant requirements.

Would lawyers in a certified Integrated MDP be allowed to act in non-lawyer capacities?

A lawyer participating in an Integrated MDP who is also a licenced non-lawyer professional, would have to limit his/her practice to either the lawyer or non-lawyer capacity and could not switch capacities. "Mixed" professional status by a single dual professional participant would not be allowed in an Integrated MDP.

Mixed professional status in one of the four non-integrated MDP models would continue to be governed by existing disciplinary and civil standards.

Does this mean that dual professionals currently fully licensed in law and one or more other professions would have to now satisfy these new MDP certification requirements?

It depends upon how they define and limit their practice. Currently, dual professionals, accountant/lawyers, for example, can practice both disciplines or either as long as they comply with existing standards. If the dual professional offers any legal services along with accounting services, the legal profession's values apply. If the principals in the service entity are all dual professionals, the entity must determine whether it is going to practice law to any extent. If so, then they must do

so as a law practice and the legal profession's "core values" apply. If they choose to practice only the other profession and engage in no law practice, then the other profession's values govern. This will not change.

[Illustration:

A firm of accountant/lawyers limit their practice to accountancy. No legal services are provided. This is not an MDP. This is not a law practice. This is not governed by lawyer standards as long as no legal services are provided. No change is proposed.

A firm of accountant/lawyers provide dual legal and accountancy services. This is a law practice or an Ancillary Business Practice Model. All legal services are governed by lawyer standards. This is not an MDP. No change is proposed.

A firm of mixed accountant/lawyers and lawyers provides legal services. This is a law firm governed by lawyer values. No change is proposed.

A firm of mixed accountant/lawyers and accountants provide integrated accountancy and legal services. This is an integrated MDP subject to certification. The accountants provide accountancy services. The lawyers must declare whether they will serve the MDP as accountants or lawyers and will be confined to one capacity or the other.]

Would certified Integrated MDP's have to be lawyer-controlled?

The ABA Commission in its initial report concluded that lawyer control was not absolutely necessary to protect "core values." Following House debate, the ABA Commission ultimately concluded that " Lawyers should be permitted to share fees and join with non-lawyer professionals in a practice that delivers both legal and non-legal professional services (Multidisciplinary Practice), provided that the lawyers have the control and authority necessary to assure lawyer independence in the rendering of legal services." Absent lawyer control over the legal services provided, "core values" are severely threatened. But control over the legal services does not

necessarily equate with ownership control over the MDP entity as a whole.

The Task Force preliminarily concludes, subject to further examination in the Demonstration Project, that a certified MDP need not be controlled by lawyer ownership, as long as the lawyers and legal services are effectively segregated from the non-legal services and consumers are assured that the combined "core values" of all participating professionals govern whenever integrated services are provided. Thus, whenever legal services are "at play," lawyer values govern along with the "core values" of the other profession(s), without diminution. Failure to honor this principle will subject the MDP to decertification and the lawyers to professional discipline.

In the certified Integrated MDP, how are consumers of legal services and consumers of non-legal services distinguished?

It is to be assumed that anyone seeking services from an integrated MDP is seeking the benefit of integrated services. Thus, it is to be initially assumed in all instances that the values of the participating professions fully apply in all respects. It is only when it is declared by the fully informed consumer that legal services are not sought or are no longer desired, that the lawyer's role ceases and the lawyer's values no longer apply.

To facilitate this, the initial "intake" function is critical. Also critical is the ability to segregate legal services from other professional services provided by the MDP. Consumers would enter the MDP entity through a common "intake" function. It would be assumed initially that the consumer was seeking both legal and non-legal services so the values of all participating professions would fully apply in all instances. If, after being adequately informed, the consumer chooses to "opt out" of legal services at any stage, then the lawyer's values would no longer apply. These values would continue to fully apply up to the "opt out" point. Likewise the values of the other profession would apply at all times until the consumer "opts out" of those services. When the consumer "opts out" of the non-legal services, then those values would cease to apply.

Otherwise, the Fully Integrated MDP provides the consumer with Fully Integrated "core values" of both professions without diminution.

D. Maintenance of "Core Values" in the Integrated MDP

In the Integrated MDP, if there is a conflict between the values of the attorneys and non-attorneys, which values prevail?

> In the Fully Integrated MDP, the services and values of each profession are integrated and cross-imputed without diminution. The consumer obtains the benefit of the highest values of both professions. There is no diminution of any professional values. If legal services are being provided to any extent, the attorney values fully apply. If non-attorney services are being provided to any extent, the values of that profession fully apply. Failure of the MDP to honor this standard subjects the MDP to decertification and the lawyers to discipline.

Is not it inevitable that there will be so many conflicts between the values of each profession that providing integrated services will be the exception rather than the rule?

> There may well be conflicts not involving "core values." Depending upon the circumstances, these can be addressed through disclosure and consent procedures with the consumer or through an administrative "variance" procedure within the Certification Demonstration Project. Such a "variance" procedure is consistent within existing certification programs.
>
> [Illustration:
>
> > An accountant and lawyer establish a certified MDP. They find that the specificity of the advertising regulations of their two professions conflict in certain respects. This does not invoke "core values." They request guidance from the Certification Program which, after consultation with the other professional licensing agency, resolves the conflict through a "variance" that is granted.
> >
> > An accountant and lawyer establish a certified MDP. They find that in providing integrated services to a consumer, there is a difference in the manner in which an issue would be addressed by each professional. The issue does not involve "core values." The

consumer is fully informed and decides how the consumer wishes to proceed.

Conflicts in "core values," however, cannot be resolved. Where such conflicts are presented, integrated services cannot be provided. Neither profession's "core values" will be diminished.

Are there some professional services that so inherently conflict that they cannot be integrated in an MDP environment.

Yes. An illustration of this is the certified public accountant audit function. It is inherently in conflict with the lawyer's duty of confidentiality. There is a similar conflict between the lawyer's duty of confidentiality and the duty of certain health care and counseling professionals to disclose evidence of child abuse. Integrating these services create inherent "core value" incompatibilities. Where this is so, integrated services cannot be provided.

[Illustration:

A consumer seeks integrated legal/audit services and is advised such integrated services cannot be provided. The consumer then seeks legal services alone and the protections of the lawyer-client relationship apply. No audit services can be provided. If the consumer "opts out" of legal services and seeks audit services exclusively, no legal services can be provided.

A consumer seeks integrated legal/medical/counseling services. During the "intake" stage, the consumer is advised that evidence of child abuse is subject to disclosure if revealed to an MDP health care or counseling professional. The consumer is advised that if such evidence exists, integrated services cannot be provided. With this informed consultation, the consumer decides how to proceed. If the consumer proceeds with integrated services, the protections of the lawyer-client relationship apply, subject to the initial "intake" disclosure. If evidence of child abuse surfaces, it will be revealed consistent with the informed disclosure provided at the "intake" stage and the MDP must withdraw from the representation.]

In the Integrated MDP, how is the duty to maintain confidences preserved?

> The attorney's duty to maintain confidences and the manner in which confidences are maintained would be unchanged for attorneys. That duty would be initially assumed to apply in all instances. Consumers would be advised in writing at the "intake" stage of the standards that apply to their confidences. If they "opt out" of legal services, then confidentiality would be governed by the other profession's values.
>
> > [Illustration:
> >
> > > A consumer "opts out" of legal services and retains a non-lawyer in an MDP for non-legal professional services and acknowledges in writing that he/she has no expectation of confidentiality other than as provided by the non-lawyer's professional standards . As the matter develops, the non-attorney recognizes the need for legal services and recommends the involvement of the MDP's attorneys, to which the consumer consents. The attorneys then undertake to provide legal services in conjunction with the non-attorney. The information provided during the non-legal services stage are not protected by lawyer standards. The information provided once legal services are provided is protected. The consumer is protected through informed consent.]

In the Integrated MDP, how is the independent judgment of the attorney preserved?

> A consumer seeking services from an MDP is initially assumed to be seeking legal services at least in part. Thus, the duty of loyalty, as currently articulated in the authorities, is fully preserved until the consumer "opts out" entirely of legal services. A rule similar to existing Rule 1-600 (Legal Service Programs) or a modification of Rule 1-600 can be developed to require that the independent judgment of attorney MDP participants be preserved in this manner.

In the Integrated MDP, how is the duty of loyalty preserved through the regulation of conflicts of interest?

The attorney's duty of loyalty manifested in the avoidance of conflicts of interest would be unchanged for attorneys. This is a "core value" and thus would not be compromised whenever legal services are provided.

[Illustration:

A consumer "opts out" of legal services and seeks only non-lawyer services in an MDP relating to a potential dispute. Simultaneously, the opposing party to the dispute seeks legal services from a lawyer in the same MDP relating to the same dispute. The MDP would have the same duty to maintain conflict records, search those records prior to accepting business, and reject business where there is a conflict with another MDP client as apply to attorneys now. Conflicts are cross-imputed to all members of the MDP as is the case with the existing attorney standard.]

In the Integrated MDP, are confidences and conflicts of interest imputed? If so, to what extent? To the other attorneys? To the non-attorney professionals?

Confidences and conflicts of interest are fully cross-imputed to all participants in the MDP. Informed and written consent or disclosure would be necessary for any services (legal or non-legal) to be provided to "conflicting" interests.

To what extent are "ethics walls" and/or "screening" effective to address conflict issues?

"Ethics walls" and "screening" would serve the same purpose they now serve in California. "Ethics walls" and "screening" do not resolve any conflict unilaterally. They merely facilitate client protection once client informed and written consent or disclosure is obtained. Conflicts in the duty of loyalty and confidentiality would be resolved only by informed and written consent or disclosure, as specified in the applicable rules.

In the Integrated MDP, how is the duty of competence preserved?

All professionals would owe consumers the highest duty of care specified in each profession's standards as related to the service provided. A failure to meet such standards would result in disciplinary and/or civil liability as appropriate.

In the Integrated MDP, how is the attorney's role in the administration of justice preserved?

MDP attorney participants retain all the duties applicable to them as officers of the court in their rendition of legal services.

In the Integrated MDP, how are consumers to understand the differences between the rendition of legal and non-legal services?

Through informed and written disclosure or consent provided at the "intake" stage of the relationship and thereafter as the status of the matter changes. By assuming that legal services are being sought in each instance initially, the consumer is protected by the legal profession's "core values" until the consumer knowingly "opts out" of legal services.

E. Correlation with Existing Rules and Standards

In the Integrated MDP, can the non-lawyers advertise for, seek and obtain business unrelated to the practice of law?

Yes. But only in accordance with the advertising and solicitation limitations applicable to attorneys and the other profession. As long as the entity provides legal services, attorney advertising and solicitation standards would apply. If the non-lawyer professional has more restrictive requirements in his/her professional regulations, those would apply. If there is a conflict in these standards which does not involve "core values", such conflicts can be resolved though an administrative "variance" process administered by the MDP Certification Program.

What obligations would an Integrated MDP have regarding IOLTA participation? CSF participation?

The trust funds of an Integrated MDP pertaining to the provision of legal services would be segregated and subject to IOLTA provisions. Any losses occasioned by the dishonest conduct of an attorney would be subject to CSF reimbursement in accordance with existing standards. As all services of an MDP would be assumed to be legal services initially, and until the consumer "opts out" of such services, IOLTA and CSF standards would be assumed to apply to all services and funds of an MDP except where a consumer has expressly "opted out" of legal services.

Can existing prohibitions on partnerships between attorneys and non-attorney professionals be modified consistent with “core values”?

> Yes. They can be eliminated in the context of the Command and Control Model and in the Certified Fully Integrated Model. They would otherwise continue to exist in all other contexts.

Can existing fee-sharing prohibitions be modified to allow fees and profits to be shared among equity owning MDP professionals consistent with “core values”?

> Yes. They can be eliminated in the context of the Command and Control Model and in the Certified Fully Integrated Model. They would otherwise continue to exist in all other contexts.

Should existing prohibitions on the unauthorized practice of law be modified to allow non-lawyers to practice law?

> Nothing in this Report is intended to allow individuals in an MDP environment who are not licensed to practice law, to engage in the practice of law.

How is the practice of law to be defined to distinguish legal from non-legal services so as to avoid “aiding and abetting” and unauthorized practice liability?

> Serious consideration should be given to defining, through a rule of court or rules of professional conduct, what constitutes the practice of law.

Should passive investment in MDP’s or other forms of legal practice be allowed?

> No.

V. INTEGRATED MDP CERTIFICATION PROGRAM

A. Overview of State Bar Certification Programs

The State Bar's Office of Certification administers various programs mandated by statute or rule of court. Some of these programs authorize persons who are not active members of the State Bar to practice law in California. Other programs regulate the manner in which members of the State Bar in California band together to render legal services. The Task Force believes its proposed integrated MDP model would fit this existing State Bar Office of Certification paradigm.

The relevant programs are listed below together with a brief description of the role of the Office of Certification:

Foreign Legal Consultants – The program certifies applicants who are licensed to practice in foreign jurisdictions who wish to practice the law of that jurisdiction in California, as Registered Foreign Legal Consultants in accordance with Rule 988, California Rules of Court and monitors compliance with the provisions of the Rule.

Law Corporations/Limited Liability Partnerships – The program certifies professional corporations and limited liability partnerships (LLP's) which wish to practice law as entities in accordance with statutes and court rules, and thereafter monitors their compliance with those provisions.

Pro Hac Vice – The program maintains statewide records of out-of-state attorneys who apply to appear in California courts on particular cases in accordance with the requirements of Rule 983, California Rules of Court.

Out-of-State Attorney Arbitration Counsel (OSAAC) Program – The program maintains statewide records of out-of-state attorneys who make application to represent parties in private arbitration proceedings in California under Code of Civil Procedure Section 1282.4.

Practical Training of Law Students – The Program certifies law students to provide legal services under the supervision of an attorney.

Integrated MDP's would be added to this list. State Bar certification programs share certain common elements. These elements would also apply to the Integrated MDP: an implementing rule of court and/or statute authorizing the administration of a certification program by the State Bar consistent with the approval of the Supreme Court; definitions and eligibility criteria; security for claims requirements; certification fees and penalties; name and/or "holding out" requirements; revocation of certification procedures; waiver or variance procedures; provisions preserving the inherent authority of the Supreme Court over the certified activities.

B. MDP Certification

The regulatory scheme would require Supreme Court approval of a new rule of court and rules and regulations authorizing the State Bar to establish and administer a MDP certification/registration program. Such a MDP Certification Program would include elements including but not limited to:

1. Explicit State Bar authorization for the Board of Governors to administer a program and to adopt rules and regulations;

2. Definition of a MDP entity as an entity properly registered with the State Bar;

3. Requirement that each person engaged in professional practice on behalf of a MDP entity be licensed to practice in a profession qualified for MDP participation within the jurisdiction where the person practices;

4. Requirement that the name of a MDP entity include words indicating that the entity is a certified MDP;

5. Requirement for security for claims;

6. Requirement that a MDP entity notify the State Bar of any change in status of its professionals;

7. Requirement that a MDP entity be subject to the jurisdiction of California and the certification jurisdiction of the State Bar with respect to its activities within California;

8. Requirement that a MDP preserve “core values” and fully comply with other applicable State Bar rules, subject to decertification by the State Bar;

9. Requirement that a MDP comply with the laws of California;

10. Explicit authorization for a MDP entity certified/registered with the State Bar to practice law in California (as an exception to B&P 6125 *et.seq.)*, including a corresponding prohibition against unauthorized practice of law by non-lawyer members of the MDP entity;

11. Provision for suspension or revocation of a MDP entity’s certification/registration for failure to comply with the requirements of the State Bar MDP program;

12. Explicit authorization for the State Bar to set and collect appropriate fees and penalties in the administration of the program;

13. Explicit statement that the MDP program rules would not affect the Supreme Court’s inherent authority over the practice of law in California.

14. Definitions of key terms used in the rules and regulations;

15. Eligibility criteria;

16. Requirement for verified applications, including specified content of applications and required manner of submission;

17. Detailed administrative standards for: annual renewal; special reports; certification fees; revocation of certification; and disclosure of information;

18. An evaluation and reporting period for submission to the Supreme Court of the State Bar’s findings as a result of the Demonstration Project and provisions for the Supreme Court to terminate the project.

19. Other provisions as are determined to be necessary and/or appropriate.

VI. REGULATORY STANDARDS AFFECTED BY PROPOSED MDP CERTIFICATION PROGRAM

Given the above findings, the most directly impacted existing authorities and standards are discussed below.

A. Fee-Splits with Non-lawyers: CRPC 1-320

This rule prohibits a member or law firm from directly or indirectly sharing legal fees with a person who is not a lawyer. Under the Task Force's findings, this rule could be amended to include a new exception allowing fee-sharing among lawyers and non-lawyer professionals who are part of a State Bar certified/registered MDP entity or who are part of an non-integrated Command and Control model entity.

B. Partnerships with Non-lawyers: CRPC 1-310

This rule prohibits a member from forming a partnership with a person who is not a lawyer if any of the activities of the partnership consist of the practice of law. Under the proposed MDP regulatory scheme, this rule could be amended to include a new exception allowing equity relationships between lawyers and non-lawyer professionals who are part of a State Bar certified/registered MDP entity or who are part of an non-integrated Command and Control model entity.

C. Aiding the Unauthorized Practice of Law: CRPC 1-300

This rule prohibits a member from aiding any person or entity in the unauthorized practice of law. Under the proposed MDP regulatory scheme, this rule would not be changed. Rather, clarification likely would be needed to highlight the fact that pursuant to a new rule of court, a duly certified/registered State Bar MDP entity is authorized to practice law in California. As a result, members of the State Bar who practice law on behalf of a MDP entity would not be aiding in any unauthorized practice of law.

One technical issue here is whether a statutory amendment to Business and Professions Code sec. 6125 is necessary. As an entity, a professional law corporation engages in the practice of law in California pursuant to a specific statutory exception (B&P sec. 6127.5).[20] In Birbrower, Montalbano, Condon & Frank v. Superior Court (1998) 17 Cal.4th 119, 133-134, the California Supreme Court expressed its view that exceptions to Business and

Professions Code sec. 6125 require legislative action. If it is determined that a statutory amendment is necessary, then a new Business and Professions Code sec. 6127.6 could be proposed exempting the certified MDP from Section 6125.

In turn, the Rules of Court and governing MDP administrative rules and regulations would limit the practice of law activities engaged in by a MDP entity to only those persons who are licensed to practice law in the jurisdiction in which they are practicing.

CRPC 1-300 also prohibits a member from practicing law in a jurisdiction where that member would be violating the regulations of the profession in that jurisdiction. This part of the rule raises multijurisdictional practice issues. Presumably, as in the case of lawyers employed by nationwide or international law firms (and in-house counsel in national/international corporations), lawyers in a MDP entity which conducts business outside of California would be required to comply with this part of CRPC 1-300, at least until the State Bar takes steps to address the multijurisdictional issue.

It is also recommended that serious consideration be given to defining, through a rule of court or rules of professional conduct, what constitutes the practice of law as is currently under consideration in the State of Washington.[21] Once these fundamentals are addressed, the unauthorized practice of law should be strictly enforced as a consumer fraud issue.

D. Advertising and Solicitation: CRPC 1-400; B&P sec. 6150 et seq

As advertising in the Integrated MDP context will most likely be integrated advertising, the existing authorities governing attorney advertising should continue unchanged and apply to the Integrated MDP, unless the non-lawyer professional's licensing restrictions on advertising are more restrictive in which event the more restrictive provisions should apply.

If advertising is entirely separate for each professional service, however, each profession's advertising standards should apply separately.

Under a general State Bar certification model and as proposed in the Task Force's MDP rule of court and administrative rules and regulations, one requirement of certification would be that the MDP must declare, under penalty of perjury, that its name and all advertising will comply with CRPC 1-400 to the extent that it is applicable.

As to Business & Professions Code sections 6150-6154 (regarding prohibited running and capping) and sections 6157-6159.2 (regarding electronic media advertising), the Task Force recognizes that the definitions used for the these statutory schemes are not identical to CRPC 1-400.[22] However, the approach set forth above should equally apply to these statutory provisions.

E. Protection of Client Confidential Information: B&P sec. 6068(e) and Avoidance of Conflicts of Interest: CRPC 3-300; 3-310; and 3-320

These are both "core values" which must be maintained and protected by the MDP entity. Business and Professions Code sec. 6068(e) requires, *inter alia*, that an attorney maintain inviolate a client's confidential information. Under the proposed MDP regulatory scheme, this standard would not be changed. It is to be assumed from the outset that each consumer of integrated MDP services is a legal services client entitled to the protections of that status until the client affirmatively "opts out" of legal services. This is to be effectuated through an informed disclosure and consent process at the "intake" stage and thereafter as the consumer's status changes through the course of the rendered services.

Although a MDP entity would be authorized to practice law in California, this does not necessarily mean that all of the MDP's activities must be the practice of law. Nor does it mean that all consumers would be "clients" within the meaning of Business and Professions Code sec. 6068(e). Because a MDP entity could offer both legal and non-legal professional services, it becomes critical, from a regulatory standpoint, for the State Bar program to delineate when MDP consumers establish a lawyer-client relationship with the MDP. This is accomplished by the presumption that the consumer of MDP services is a legal services client until the consumer "opts out" of receiving legal services.

The consequence of being a legal services client is that all information (including information gained in consultations with the MDP's non-lawyer professionals) would be governed by the lawyer's standards of confidentiality as if the person had sought legal services from a traditional law firm. The consequence of a consumer "opting out" of legal services would be that, as of the point at which the consumer "opts out" of legal services, the lawyer's confidentiality standards cease to apply.

This approach depends upon an informed disclosure and consent procedure. A primary benefit of disclosure and consent is that it affords consumers the opportunity to weigh relevant benefits and detriments and to make an informed choice as to how services are to

be provided.

Consistent with this approach, California's Rules of Professional Conduct generally favor client-orientated decision making on a variety of "core value" representational issues by utilizing disclosure and consent: conflicts of interest (CRPC 3-310 & 3-320), business transactions with clients and adverse pecuniary interest (CRPC 3-300), referral fees among lawyers (CRPC 2-200), lawyer/advocate testifying as a witness in a client's case (CRPC 5-210), payment of expenses to third parties from funds collected as a result of representation (CRPC 4-210(A)), permissive termination of representation (CRPC 3-700(C)(5)), simultaneous representation of an organization and a constituent of the organization (CRPC 3-600(E)), ongoing sexual relations between attorney and client which predate the initiation of the lawyer-client relationship (CRPC 3-120), sale of a law practice (CRPC 2-300), employment on a client's matter of a disbarred, suspended, resigned, or involuntarily inactive lawyer (CRPC 1-311).

Although the ABA model standards traditionally have differed from California's rules on the matter of disclosure of and consent to conflicts of interest, the latest version of the ABA's Ethics 2000 Commission's proposed amendments to MRPC 1.7 (Conflicts of Interests: General Rule) embrace disclosure and consent.[23]

Disciplinary case law and CRPC 3-600(D) presently recognize a duty to inform certain persons that they are not clients. In Butler v. State Bar (1986) 42 Cal.3d 323, 329, an attorney's duty to communicate was found to include the obligation to advise people who may reasonably believe they are clients that they are, in fact, not clients. (See also, In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 547, 563.) CRPC 3-600(D) requires an attorney representing an organization to explain to directors, officers, employees, agents and other constituents the identity of the attorney's client (ordinarily the organization, itself, and not any constituent).

In the context of family law practice where certain litigants often choose to proceed in *propria personae*, the legislature and the courts have adopted innovative mechanisms to provide assistance in the form of Family Law Information Centers (Family Code sec. 15000) and Family Law Facilitators (Family Code sec. 10000). In implementing these two new programs, the Judicial Council has issued approved disclosure forms to be used for informing *pro se* litigants that: lawyer-client relationships are not formed; information will not be treated as confidential; and services may be provided to adverse parties in the case.

The Task Force believes that the above observations lend support to the proposition that the "core values" pertaining to confidentiality and conflicts of interest can appropriately be addressed through a mandatory disclosure and consent protocol that requires each customer of a certified MDP entity to affirmatively "opt out" of legal services before losing the protections of those "core values." The consumer makes the informed choice as to whether the services to be provided are legal services or not.

The corresponding consequence is that the duty of confidentiality (including the evidentiary privilege of Evidence Code Section 950 *et seq*.) owed by the lawyer members of the MDP is presumed to be applicable unless and until the consumer affirmatively declares that legal services are no longer being received.

Finally, the full cross-imputation to all participating professionals of conflicts and confidentiality values in full conformity with existing lawyer standards avoids any diminution in the lawyer's "core value" duties of loyalty and confidentiality.

F. Professional Independent Judgment: CRPC 1-600

This is a "core value" which must be maintained and protected in the MDP environment. Under the CRPCs, only CRPC 1-600 (Legal Service Programs)[24] explicitly addresses a member's "professional independent judgment." The Task Force believes that existing CRPC 1-600 provides a vehicle for assuring that lawyers' independent judgement is preserved in the MDP environment. CRPC 1-600 would need to be revised, to some extent, to recognize that lawyers participating in a certified MDP entity do not thereby violate the rule's prohibition against fee-splits with non-lawyers and against aiding the unauthorized practice of law.

The proposed MDP Certification Demonstration Project anticipates that all lawyers will continue to have individual civil and disciplinary liability for compromising their duty of independent judgment. The MDP entity will be subject to decertification in the event that any "core value" of the legal profession is "wilfully" compromised.

G. Other Issues.

A number of other professional responsibility standards are also potentially affected by the development of an integrated MDP practice form. Among these other standards are the following:

- Geographic scope of rules: CRPC 1-100(D)
- Failing to act competently: CRPC 3-110
- Communication with a represented party: CRPC 2-100
- Discriminatory practices: CRPC 2-400 (uses term “law practice”)
- Limiting liability to client: CRPC 3-400
- Preserving identity of client funds and property: CRPC 4-100
- Unconscionable or illegal fees: CRPC 4-200
- Purchasing property at a foreclosure sale; CRPC 4-300

The above issues have not been exhaustively explored. The Task Force anticipates that the recommended public comment process will seek member and public input on these and other subjects aimed at assuring full accountability for a MDP’s responsibility to assure “core values” are preserved and the public is adequately protected.

VII. CONCLUSION

It is critical in addressing MDP to appreciate that the discussion is just the starting point in the increasingly critical process necessary to evolve, develop and advance the systems by which legal services are delivered to the public with the goal of making legal services and the administration of justice more accessible. MDP alone does not address this issue in any meaningful way. But it is a starting point in reconsidering the systems by which legal services are provided to a public–a public, the majority of which is now unserved or under-served by the legal profession.

Focusing on the narrow issue of MDP, there are existing practice models through which a form of MDP already exists in California and there are potentially viable models for permitting a “pure form” of MDP to exist in California. This is achievable while at the same time assuring that the “core values” of the profession are maintained.

The Task Force also finds that serious consideration should be given to defining, through a Rule of Court or Rule of Professional Conduct, what constitutes the practice of law in a manner that functionally works in a market where the majority of the population cannot currently afford legal services. The State of Washington has boldly sought to address this issue and their model and foresight on this subject warrants consideration.

As these critical delivery system issues are addressed, it is also incumbent upon the legal profession to address the public protection/consumer fraud issues presented by the unauthorized practice of law.

The Task Force recommends that this Report be published for a ninety-day public comment period so all interested parties can be heard regarding this important issue. Upon analysis of the public comment received, and in consultation with the California Supreme Court, the Task Force looks forward to serving the Board of Governors and the California Supreme Court in facilitating the implementation or further study of any of the concepts set forth in this Report.

The Task Force expresses its gratitude and appreciation for the opportunity to have served the State Bar in developing this Report.

VIII. END NOTES

1. California Rule of Professional Conduct 1-310 provides that, "A member of the State Bar shall not form a partnership with a person who is not a lawyer if any of the activities of that partnership consist of the practice of law." California Rule of Professional Conduct 1-320(A), in part, provides that, "Neither a member nor a law firm shall directly or indirectly share legal fees with a person who is not a lawyer...."

2. ABA Press Release, Aug. 4, 1998.

3. For a perspective on the international MDP scene see: John S. Dzienkowski & Robert J. Peroni, "Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the 21st Century, 69 Fordham L.Rev. 83; "The Case for MDPs: Should Multidisciplinary Practices be Banned or Embraced?" by Wade Bower, Law Practice Management Magazine, July/Aug. 1999 (http://www.abanet.org/lpm/magazine/mdp-bowe995.html); "LawSoc Votes for MDPs after 10-year Wait," by Lucy Hickman, The Lawyer, Oct. 18, 1999, at p. 2.

4. Information on the WTO and GATS positions on access to professional services is found at: http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto06/wto6_38.htm and http://www.wto.org/english/tratop_e/serv_e/20-prof.htm . Accountancy is specifically addressed at: http://www.wto.org/english/news_e/pres98_e/pr118_e.htm; See also, Laurel S. Terry, "A Challenge to the ABA and the U.S. Legal Profession to Monitor the GATS 2000 Negotiations: Why You Should Care," ABA 27th National Conference on Professional Responsibility; Lauren S. Terry, "GATS' Regulation of Transnational Lawyers & Its Potential Impact on U.S. State Regulation of Lawyers," 34 Vanderbilt J. Transnat'l L.___ (Oct. 2001) (forthcoming).

5. At the time of its publication, the 1999 Report and Recommendation was considered to be “the final report” of the ABA MDP Commission. As it turned out, the ABA House of Delegates voted to postpone action on the MDP issue until further study was accomplished.

6. The State Bar of California submitted a resolution stating, in part, that the ABA proposal addressed “complex and difficult issues with profound implications for the legal profession and the protection of the public interest” and recommended that the ABA defer final action until the ABA MDP Commission presented a more fully developed proposal. The Board of Governor resolution adopted a substantive report of the Standing Committee on Professional Responsibility and Conduct (“COPRAC”) that identified specific unresolved ethical issues in the recommendation and "welcome[d] proposals for new forms of legal practice designed to foster benefits for clients." (The full text of the Board’s resolution, including COPRAC’s analysis of the 1999 ABA Recommendation, is provided at http://www.abanet.org/cpr/sbcalif.html.)

7. For example, see “Round 2 begins for MDPs” by David M.M. Bell, California Bar Journal, Sept. 1999 at p. 8.

8. A viewable video stream recording of the February 2000 ABA Town Hall Meeting is available at: http://www.abanet.org/mdp .

9. The full text of the ABA MDP Commission’s March 22, 2000 draft recommendation is found at http://www.abanet.org/cpr/marchrec.html.

10. The full text of the ABA MDP Commission’s May 15, 2000 Recommendation and Report is found at http://www.abanet.org/cpr/mdpfinalrep2000.html.

11. By resolution adopted by the Board of Governors at its June 10, 2000 meeting the State Bar of California’s delegation to the ABA’s July 2000 Annual Meeting were instructed to work to achieve deferral of any ABA House of Delegates action that would address the merits of the MDP issue.

12. In October 2000, the ABA Standing Committee on Ethics and Professional Responsibility issued a request for comment on proposed amendments to the ABA Model Rules reflecting the ABA Standing Committee’s preliminary conclusion that, “participation in a strategic alliance or other contractual relationship appears to raise few unique challenges to the preservation of the lawyer’s core ethical values....”

13. In California, there are currently studies or other activities involving multijurisdictional practice, court facilitated assistance, discrete task representation, and *propria personae* assistance.

14. See, *e.g.*, “Point Counter Point” views of Demetrios Dimitrious, California Bar Journal, July 1999 (http://www.calbar.org/2cbj/99jul/pointcp.htm).

15. Ernst & Young, LLP press release dated November 3, 1999 (posted in the news archives of http://www.ey.com).

16. "Dream Team Tax Team," by Arian Campo-Flores, American Law, Sept. 1999 at p. 18. (See also, KPMG Press Release, Aug. 4, 1999 (found at http://www.us.kpmg.com).)

17. A summary provided by the ABA on the "Status of Multidisciplinary Practice by State" can be found at www.abanet.org/cpr/mdp_state_summ.html and at www.abanet.org/cpr/mdp-state_action.html and allows direct hypertext access to individual state reports and resolutions that are posted on the internet.

18. California's, Court of Appeal has recognized the need for lawyers to work cooperatively with other service providers. In Ojeda v. Sharp Cabrillo Hospital (1992) 8 Cal.App.4th 1, 4 (reversal of trial court finding that payment of a contingent fee to a nonlawyer consulting firm violated ethical prohibitions against fee-splits with nonlawyers and the unauthorized practice of law), the court observed:

> As modern litigation becomes increasingly complex, lawyers are routinely called upon to obtain, understand and utilize specialized expertise in order to effectively evaluate and litigate cases. When lawyers do not possess the expertise themselves, they must seek out others for assistance.

19. In 1983, the then State Bar Board Committee on Admissions and Competence considered the report and recommendation of its Standing Committee on Professional Responsibility and Conduct ("COPRAC") that a form of ABA Model Rule 5.7 not be adopted in California. Subsequently, COPRAC promulgated State Bar Formal Opinion No. 1995-141, finding that business practices ancillary to a law practice are not prohibited if appropriate precautions are taken.

20. In the absence of a specific statutory exception, California authorities interpreting Business and Professions Code sec. 6125 would prohibit a corporation from practicing law. See: People ex rel, Los Angeles Bar Association v. California Protective Corporation (1926) 76 Cal.App. 354; People v. Merchants Protective Corp. (1922) 189 Cal. 531, 538. See also, State Bar Formal Op. No. 1987-91 and L. A. County Bar Assc. Op. No. 444.

21. Washington State's definition of the practice of law is available at www.wsba.org/proposed/.

22. Business and Professions Code sec. 6152(a) uses the phrase, "solicitation or procurement of business for the attorney at law or law firm...." Bus. & Prof. Code sec. 6157(c) uses the phrase, "solicits employment of legal services provided by a member...."

23. The text of proposed amended MRPC 1.7 and an explanatory memo are found in the ABA Ethics 2000 website at: http://www.abanet.org/cpr/e2k/rule17memo.html and http://www.abanet.org/cpr/e2k/rule17draft.html .

24. CRPC 1-600 provides:

> Rule 1-600. Legal Service Programs
>
> (A) A member shall not participate in a non-governmental program, activity, or organization furnishing, recommending, or paying for legal services, which allows any third person or organization to interfere with the member's independence of professional judgment, or with the client-lawyer relationship, or allows unlicensed persons to practice law, or allows any third person or organization to receive directly or indirectly any part of the consideration paid to the member except as permitted by these rules, or otherwise violates the State Bar Act or these rules.
>
> (B) The Board of Governors of the State Bar shall formulate and adopt Minimum Standards for Lawyer Referral Services, which, as from time to time amended, shall be binding on members.